IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 436 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 07, 2006.

Heard Shri Jaiswal, learned counsel for the petitioners and Shri Chilgule, Advocate, holding for Shri Kilor, learned counsel for the Caveator.

The petitioners have challenged the order dated 6.1.2006 passed by the Civil Judge, Junior Division, Deulgaon Raja, rejecting their application under Order 1 Rule 10 of Civil Procedure Code, for being added as party defendants in Regular Civil Suit No. 145 of 1997. The Suit is instituted by present respondent No.1 for declaration and injunction against Municipal Council that a portion of land situated adjacent to his Cinema Theater near its western entrance and ticket sale counter i.e. on old Jafabad Road should not be allotted or let out to anybody. The petitioners have in the year 2005

moved this application contending that they are already in possession of said portion of land since last 20-25 years and they have taken it on rent from Municipal Council and they are paying taxes and rent regularly to Municipal Council. It is contended that though their rights would be adversely affected if the suit is decreed, the Court below has rejected that prayer observing that the rights of petitioners are only through Municipal Council and therefore they do not have any independent right in the property and matter before it is being defended by the Municipal Council.

Shri Jaiswal, learned counsel for the petitioners states that the clients of Advocate Chilgule i.e. Caveators are not party respondents before this Court. He contends that ultimately if the suit is decreed, the decree therein would be operating to the prejudice of the petitioners and therefore, they should be added as party.

Shri Chilgule, learned counsel, on the other hand, states that Caveators are not deliberately joined as parties. He states that no legal right or interest of petitioners will be violated because their rights are subordinate to the rights of Municipal Council. He, therefore, supports the

impugned order.

It is apparent that the petitioners are not parties to the litigation as filed. The litigation is filed in the year 1997 and after about eight years, present application has been filed. It is clear that the civil rights available to the petitioners will not be affected, as they are not parties. The said judgment and decree cannot operate to their prejudice.

I, therefore, find no reason to carve out any exception to the order passed by the Court below on 6.1.2006. There is no jurisdictional error or perversity in the impugned order. No case is made out for interference in writ petition. Writ Petition is dismissed. No order as to costs.

JUDGE

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